IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8552 OF 2004

Mrs. Pamela Darial Miranda & Ors. ... Petitioners

Vs.

Mrs. Mumtaz Iqbal Shaikh & Anr. ... Respondents

Mr. R.A. Thorat for the petitioners.

Mr. A.K. Abhyankar with Mr. R.S. Patil for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 1ST FEBRUARY, 2005.

P.C.:-

1. The petitioners are original defendants 2 to 4. They have challenged in this petition the judgment and decree dated 1/9/2004 passed in Appeal No.381 of 2003 in R.A.E.R. Suit No.642/1212 of 1998. The brief facts which give rise to this petition may have to be stated. The case of the plaintiffs is that the original landlord of the suit premises filed a suit for eviction against defendant 1, original tenant - Mr. D.Leveda and defendants 2 to 4 on the ground of sub-letting by defendant 1. The original tenant died on 28/7/1987. By a deed of conveyance dated 7/2/1997 the original owner sold and conveyed the building in which the suit premises are situated, to the plaintiffs. The tenancy of the tenants was attorned to the plaintiffs. That suit was

dismissed on the ground that the plaintiffs who are the subsequent purchasers were not impleaded therein. However, the point of sub-letting was decided against the defendants.

2. The plaintiffs then filed the instant suit on 28/7/1998 against defendants 2 to 4 and the unknown heirs and legal representatives of the original tenant for eviction, inter alia, on the ground of sub-letting. It is the case of the plaintiffs that the suit premises are illegally sub-let to the defendants. The case of defendant 2 was that he is a protected sub-tenant/licencee of the original tenant. The trial court decreed the suit holding that the suit premises were illegally sub-let by the original tenant to the defendants. The trial court held that defendant 2 had failed to prove that he was a protected sub-tenant/licencee. The appeal court confirmed the said findings and, hence, this petition.

3. I have heard Mr. Thorat, the learned counsel appearing for the petitioner. Mr. Thorat assailed the impugned judgment and decree on two grounds. Drawing my attention to Article 66 of the Limitation Act, 1963, he contended that the suit is barred by the law of limitation. He contended that the earlier suit was preceded by a notice dated 17/3/1978. Therefore, the cause of action has arisen on 17/3/1978 and the suit which is filed on 28/7/1998 is not within 12 years from

the date of cause of action and, therefore, is barred by limitation. In this connection, the learned counsel relied on the judgment of this court in **Kondeo Savalaram Punse v. Digambar Ramrao Pai & others, 2001 (4) BCR 267**.

4. I am unable to accept the submission of the learned counsel. It is significant to note that in the plaint, the plaintiff has clearly stated that her predecessor-in-title had filed a suit for eviction. However, the suit papers were not handed over to the plaintiff though called upon to do so. The plaintiff was not a party to that suit. The date of the deed of conveyance is dated 7/2/1997. The original tenant expired on 28/7/1987. Considering the date of the deed of conveyance and the date on which the original tenant expired i.e. 28/7/1987, the suit filed on 28/7/1998, is, in my opinion, within the period of limitation. In **Kondeo Savalaram Punse's case (supra)**, this court was considering a case where the trial court's judgment decreeing the landlord's suit on the ground of acquisition of alternative accommodation was reversed by the appellate court. In the context of section 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Rent Act"), this court observed that the cause of action cannot be called a continuous cause of action. But in the same judgment this court observed that the limitation for initiating action would commence from the date of knowledge. If the facts of the present case are examined in the light of

this judgment, it must be held that the instant suit is within the period of limitation.

5. In this connection, I may also refer to the judgment of the Supreme Court in **V. Dhanapal Chettiar v. Yesodaai Ammal, AIR 1979 SC 1745** to which my attention is drawn by Mr. Abhyankar, the learned counsel for respondent 1, where the Supreme Court was considering a decree passed against a tenant under the State Rent Control Act. The relevant portion of the said judgment may be quoted.

> "In order to get a decree or order for eviction against a tenant under any State Rent Control Act, it is not necessary to give notice under section 106 of the T.P. Act. Determination of a lease in accordance with the Transfer of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the T.P. Act. On the

question of requirement of such a notice under Section 106 of the T.P. Act the difference in the language of various State Rent Acts does not bring about any distinction. It is not correct to say that S.106 of the T.P. Act merely providing for termination of a lease either by the lessor or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated. Even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise."

6. Therefore, liability to be evicted under the State Rent Control Act is incurred the moment the ground of illegal sub-letting is made out. Notice of termination will not be necessary. The notice of termination in the earlier suit will not fix the starting point of limitation. The limitation will start running from the date on which the illegal sub-letting comes to the

knowledge of the plaintiff and viewed thus, the present suit is within the period of limitation.

7. Mr. Thorat then drew my attention to the observations of the lower appellate court to the effect that "the evidence on record bears out the only fact of the joint residence with the original tenant from 1974 onwards but certainly not prior to or on 1/2/1973". Relying on the judgment of the Supreme Court in **M/s. Delhi Stationers and Printers v. Rajendra Kumar, AIR 1990 SC 1208**, Mr. Thorat contended that sub-letting is a transfer of an exclusive right to enjoy the property in favour of the third party and the said right must be in lieu of payment of some compensation or rent. Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession.

8. Mr. Thorat contended that therefore, joint residence is inconsistent with the plea of sub-tenancy. In the facts of this case, I am unable to accept this submission of Mr. Thorat. In this case, the defendants have taken contrary stand at all stages. Admittedly, they are not the heirs or legal representatives of the original tenant. They are not the family members of the original tenant. At one stage they seek benefit of section 5(11)(c) of the Rent Act and at another stage, it is contended that the defendants are protected licencees.

At some stage it is contended that the defendants are lawful sub-tenants and are in exclusive use, occupation and possession of the suit property as protected licencees. In the written statement, they have submitted that they were residing together with the original tenant and not separately in any part of the premises. This conflicting stand reflects on their credibility and on this issue I concur with the lower appellate court. Besides, the respondents have admitted that they were paying rent in the name of the original tenant. As stated by the Supreme Court in **Delhi Stationers and Printer's case (supra)** payment of rent would be one of the important ingredients of sub-letting. I also cannot loose sight of the fact that on illegal sub-letting both the courts have given a concurrent finding of fact which cannot be disturbed in the absence of perversity. In my opinion, there is no substance in this petition and, hence, it is rejected.

9. At this stage Mr. Thorat states that some time may be given to enable the petitioners to approach the Supreme Court. In the circumstances of the case, the execution of the decree is stayed for a period of 10 weeks from today on the petitioners and all the adult members of their family giving an undertaking to this court that if within 10 weeks if they do not get any favourable order from the Supreme Court, they will handover peaceful and vacant possession of the suit premises to the respondents. Undertaking to be filed

within two weeks from today. The undertaking should also state that the petitioners shall not induct anybody in the suit premises.

(SMT. RANJANA DESAI, J.)